

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
ADVANCED GLOBAL TECHNOLOGY, LLC,	:	07 Civ. 3654 (JSR)
	:	ECF CASE
Plaintiff,	:	
	:	
- against -	:	
	:	
XM SATELLITE RADIO INC.,	:	
	:	
	:	
Defendant.	:	
-----X	:	

**ANSWER AND AFFIRMATIVE DEFENSES OF ADVANCED GLOBAL  
TECHNOLOGY, LLC TO XM SATELLITE RADIO INC.'S COUNTERCLAIM**

For its Answer to XM Satellite Radio Inc.'s Counterclaim (the "Counterclaim"),  
Advanced Global Technology, LLC, by its undersigned counsel, hereby states as follows:

1. Denies the allegations contained in paragraph 1 of the Counterclaim, except admits that XM Satellite Radio Inc. purports to seek rescission of the Master License Agreement.
2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Counterclaim.
3. States that Advanced Global Technology, LLC is a limited liability company organized under the laws of New York and admits the remaining allegations contained in paragraph 3 of the Counterclaim.

4. Denies the allegations contained in paragraph 4 of the Counterclaim, except admits that Advanced Global Technology, LLC, entered into the Master License Agreement with XM Satellite Radio Inc., dated as of October 17, 2005.

5. Denies the allegations contained in paragraph 5 of the Counterclaim, except admits that paragraph 9 of Advanced Global Technology, LLC's First Amended Complaint alleges that "AGT was formed for the sole purpose of doing business with XM" and that, "[b]ased on XM's assurances of an enduring and bright future for a new business partner, AGT was formed."

6. Denies the allegations in paragraph 6 of the Counterclaim.

7. Denies the allegations in paragraph 7 of the Counterclaim.

8. Denies the allegations in paragraph 8 of the Counterclaim.

9. Denies the allegations in paragraph 9 of the Counterclaim.

\* \* \*

Advanced Global Technology, LLC further denies the allegations in the Counterclaim not heretofore specifically admitted, including those portions of the Counterclaim requesting relief.

### **AFFIRMATIVE DEFENSES**

As further and separate defenses to the Counterclaim, Advanced Global Technology, LLC, states the following affirmative defenses:

#### **First Defense**

The Counterclaim fails to state a claim upon which relief may be granted.

**Second Defense**

Defendant-counterclaim plaintiff had actual or constructive knowledge of the alleged misrepresentations, misstatements, and/or omissions set forth in the Counterclaim.

**Third Defense**

The Counterclaim fails to allege facts and fails to make a showing sufficient to support any granting of extraordinary or equitable relief.

**Fourth Defense**

Defendant-counterclaim plaintiff fails to plead fraud or its predicate acts with sufficient particularity.

**Fifth Defense**

Defendant-counterclaim plaintiff's claims are barred in whole or in part by the doctrines of equitable estoppel, waiver, acquiescence, laches, and unclean hands.

**Sixth Defense**

Advanced Global Technology, LLC reserves the right to assert other defenses as discovery proceeds.

\* \* \*

WHEREFORE, on the Counterclaim, Advanced Global Technology, LLC respectfully requests a judgment:

- a. dismissing the Counterclaim with prejudice;
- b. denying all relief sought in the Counterclaim;

- c. awarding Advanced Global Technology, LLC its costs and expenses in defending this Counterclaim, including reasonable attorneys' fees; and
- d. providing such other and further relief as the Court deems just and proper.

Dated: New York, New York  
March 6, 2008

DEBEVOISE & PLIMPTON LLP

By: /s/ Robert H. Chandler  
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*Attorneys for Plaintiff*  
*Advanced Global Technology, LLC*

**CERTIFICATE OF SERVICE**

I, Robert H. Chandler, one of the attorneys for Advanced Global Technology, LLC, herein certify that: I am over eighteen (18) years of age. On the 6th day of March, 2008, I caused a true and accurate copy of the within Answer and Affirmative Defenses of Advanced Global Technology, LLC to XM Satellite Radio Inc.'s Counterclaim to be served by electronic mail and by first class mail to the following:

Jeffrey A. Mishkin, Esq. (jmishkin@skadden.com)  
Anthony J. Dreyer, Esq. (adreyer@skadden.com)  
Peter S. Julian, Esq. (peter.julian@skadden.com)  
Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, NY 10036

I certify under penalty of perjury that the foregoing is true and correct.

Executed on this 6th day of March, 2008, in New York, New York.

/s/ Robert H. Chandler

Robert H. Chandler